

## REMARKS:

Claims 1-10 are presented for examination. Claims 1, 7 and 9 have been amended hereby.

Reconsideration is respectfully requested of the rejection of claims 1, 7 and 9 under 35 U.S.C. 112, second paragraph.

Initially, it is noted that applicants do not necessarily concur with the Examiner with regard to the Examiner's analysis of the claims (even before amendment hereby) under the applicable rules and regulations.

Nevertheless, in order to expedite prosecution of the application, claims 1, 7 and 9 have been amended hereby to even more clearly recite the presently claimed subject matter.

For example, with regard to claim 1, this claim has been amended hereby to recite "a cost to the entity of a selected debt/equity ratio relative to a risk associated with the selected debt/equity ratio" (emphasis added)

As described in the specification, a selected debt/equity ratio will have associated therewith a cost to the entity, for example, in the form of a change in earnings (see, e.g., Table 1 – showing different earnings at different debt/equity ratios; and pages 13-16).

Further, with regard to claim 7, this claim has been amended hereby to more explicitly recite: a) a plurality of iteratively changed values of stock price associated with the entity; and b) the connection between the value of the stock price and the variable  $\Delta N_{eff}$  in the recited formula.

Further, with regard to claim 9, while this claim has been amended hereby to correct what appears to be a minor antecedent basis issue, it is respectfully submitted that it is unclear what clarification the Examiner would like with respect to the formula and variables of this claim.

It is noted that EPS is defined in claim 9 as equal to dividend per share + retained EPS; that dividend per share is defined in the claim as equal to the value of the equity dividend / the number of existing shares (each of which is recited as being part of the input data); and that retained EPS is defined in the claim as equal to the value of earnings without taking effect of any interest expense from the convertible security minus attributed after-tax interest expense from the convertible security) / (the number of existing shares plus the number of attributed shares from the convertible security) (again, each of which is recited as being part of the input data).

If the Examiner would like to continue to make the 35 U.S.C. 112, second paragraph, rejection of claim 9, clarification is respectfully requested.

Therefore, it is respectfully submitted that the rejection of claims 1, 7 and 9 under 35 U.S.C. 112, second paragraph, has been overcome.

Reconsideration is respectfully requested of the rejection of claims 1-10 under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Patent Application Publication 2003/0046203, hereinafter "Ichihari et al."

It is respectfully submitted that applicants do not concur with the Examiner with regard to the Examiner's analysis of the claims (even before amendment hereby) and the Ichihari et al. reference.

For example, it is noted that claim 1 (the sole pending independent claim) recites the following:

- iteratively changing a value of a debt/equity ratio associated with an entity" (emphasis added)

In this regard, it is noted that the Examiner discusses, at page 3 of the September 20, 2007 Office Action, paragraphs 0062-0063 of Ichihari et al. as allegedly showing this feature.

It is respectfully submitted that these cited paragraphs of Ichihari et al. do not teach, show or even suggest this iteratively changing a value of a debt/equity ratio feature. This is because, as best understood, the debt/equity ratio of Ichihari et al. is not iteratively changed (regardless of the discussion of any losses remaining or not remaining in the equity portion) but, rather, a single optimum debt/equity ratio is determined. For the Examiner's convenience, paragraphs 0062-0063 of Ichihari et al. are reproduced below:

[0062] The required capital composition (the optimum debt/equity ratio) of the invested capital will be described.

[0063] Even if an enterprise makes loss as a result of volatility of earnings by a business risk, it can continue business as long as the loss remains in the equity portion. If, however, the loss exceeds the equity portion, insolvency results causing the enterprise to go bankrupt. That is, there is a relationship among the earnings probability distribution, capital composition, and default probability.

Moreover, it is noted that claim 1 (the sole pending independent claim) also recites the following:

- “calculating values of earnings per share risk associated with the entity based at least in part upon the iteratively changed values of the debt/equity ratio associated with the entity” (emphasis added)

In this regard, it is noted that the Examiner discusses, at page 3 of the September 20, 2007 Office Action, paragraph 0061 (and Step 106 in Fig. 1) of Ichihari et al. as allegedly showing this feature.

It is respectfully submitted that these cited portions of Ichihari et al. do not teach, show or even suggest this calculating values of earnings per share risk associated with the entity based at least in part upon the iteratively changed values of the debt/equity ratio feature. This is because, as best understood, the equity risk of Ichihari et al. is not based at least in part upon the iteratively changed values of the debt/equity ratio but, rather, based on fluctuation of stock price (see, e.g., step 106 of Fig. 1).

For the Examiner’s convenience, paragraphs 0061 of Ichihari et al. is reproduced below (as seen, this paragraph does nothing to change the explicit indication of Step 106 of Fig. 1 that the calculation of equity risk is based on fluctuation of stock price):

[0061] Using these techniques, the value of the equity risk  $\beta$  is calculated in step 106 and the capital stock cost (Re) is calculated in step 108.

Finally, with reference to dependent claims 7 and 9, it is noted that each of these claims recites features directed to specific additional formulas and calculations.

In this regard, it is noted that the Examiner discusses, at page 5 of the September 20, 2007 Office Action, paragraphs 0033-0039 of Ichihari et al. as allegedly showing these features.

The cited portions of Ichihari et al. have been reviewed and, as best understood, these passages do not teach, show or even suggest the specific formulas recited in claims 7 and 9.

If the Examiner would like to continue to make the 35 U.S.C. 102(e) rejection of claims 7

and 9, clarification of how the specific formulas recited in claims 7 and 9 is disclosed in these passages is respectfully requested. For the Examiner's convenience, paragraphs 0033-0039 of Ichihari et al. are reproduced below:

[0033] The business performance index processing system according to the present invention may be applicable to a business performance index used to measure performance of an entire enterprise or business units in the enterprise, or evaluate a new business to be started.

[0034] The business performance index processing system according to the present invention first obtains the required capital composition (the optimum debt/equity ratio) of the invested capital based on the probability distribution of return on invested capital, and obtains the cost of capital thereof. It then subtracts the cost of capital from an operating profit to obtain the market efficiency value added (MEVA) as the economical business performance index.

[0035] The system then estimates intangible value which is not listed in financial statements and not directly incorporated in price or cost, thereby obtaining the socio-environmental value added (SEVA) as the business performance index in terms of external economies.

[0036] The system then combines these two indices together to obtain the future inspiration value (FIV) that is the business performance index representing the generic value of an enterprise.

[0037] FIG. 1 is a flowchart showing a concept of a business performance index processing system according to the present invention;

[0038] The embodiment according to the present invention may comprise the following steps of evaluating the enterprise using the tangible index and intangible index. They are the steps of evaluating the market efficiency value added (MEVA) (step 122), the socio-environmental value added (SEVA) (step 132), and the future inspiration value (FIV) (step 150). It thereby provides business performance indices that relate the management of performance evaluation within a company, incorporate a risk (uncertainty) evaluation in the investment and withdrawal guidelines, appropriately create a business portfolio (selection and concentration), make the capital composition (financing) appropriate, and eventually bring a sustainable growth to the company in harmony with the society.

[0039] The calculation performed to evaluate the market efficiency value added (MEVA) will be described.

Therefore, it is respectfully submitted that the rejection of claims 1-10 under 35 U.S.C. 102(e) as allegedly being anticipated by Ichihari et al. has been overcome.

Finally, it is noted that this Amendment is fully supported by the originally filed application and thus, no new matter has been added. For this reason, the Amendment should be entered.

For example, support for the amendment to claim 1 regarding the recorded calculated earnings per share values associated with the entity and the recorded calculated earnings per share risk values associated with the entity characterizing a capital structure of the entity in connection with a cost to the entity of a selected debt/equity ratio relative to a risk associated with the selected debt/equity ratio may be found in claim 1, as filed.

Further, support for the amendment to claim 7 regarding  $\Delta N_{\text{eff}}$  equaling the input change in the effective number of common shares outstanding, based at least in part upon each of a plurality of iteratively changed values of stock price associated with the entity may be found, for example, at page 7, lines 3-24.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,  
GREENBERG TRAURIG, LLP

Dated: January 22, 2008

By: /Matthew B. Tropper/  
Matthew B. Tropper  
Registration No. 37,457

Mailing Address:  
GREENBERG TRAURIG, LLP  
MetLife Building  
200 Park Avenue  
New York, NY 10166  
Telephone: (212) 801-2100  
Facsimile: (212) 801-6400